

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL R. SHADDICK,

Plaintiff,

vs.

WESTERN HERITAGE CREDIT UNION,
a Nebraska formed credit union;

Defendant.

8:16CV11

MEMORANDUM AND ORDER

Defendant removed this case to federal court from the District Court of Scotts Bluff County, Nebraska. ([Filing No. 1](#)). Defendant's removal filings do not request a trial location. See NECivR [40.1\(b\)](#)("the removing party at the time of filing a petition for removal, must request in writing trial in Omaha, Lincoln, or North Platte"). The case was assigned by the clerk's office to this court's Omaha trial docket.

Plaintiff filed a request for trial in North Platte, stating "[t]he basis for the request is that most witnesses are located either in Alliance or Scottsbluff, Nebraska and . . . it would be burdensome to require travel to Lincoln or Omaha." ([Filing No. 5](#)). Defendant objects to trial in North Platte, and moves for a Lincoln trial location, explaining defense counsel is primarily located in Omaha, Nebraska, with an office location in Lincoln and no offices in Western Nebraska; Defendant's representatives often travel in the Lincoln, Nebraska area; the court has a manned courthouse in Lincoln, Nebraska; and "Lincoln, Nebraska will represent a fair and just compromise amongst the parties on the appropriate venue for trial since Defendant's counsel will be required to travel from Omaha, Nebraska and Plaintiff's counsel to travel from western Nebraska." ([Filing No. 7](#)).

The court "considers the convenience of the litigants, witnesses, and attorneys when deciding the place of trial." NeCivR [40.1\(b\)\(1\)](#). Based on Plaintiff's complaint, the actions underlying Plaintiff's claims occurred in Scotts Bluff County, Nebraska. The

case was filed in Scotts Bluff County, and the plaintiff is represented by counsel located in Scottsbluff, Nebraska. Defendant was served in Box Butte County, Nebraska. ([Filing No. 1-1](#)). Plaintiff states his witnesses are located in Alliance or Scottsbluff, Nebraska, and based on the allegations of the complaint, the court believes Defendant's witnesses live and work there as well.¹ Defense counsel is located in Omaha, but the convenience of counsel is afforded less weight than the convenience of the parties and witnesses when deciding a motion to change the trial location. While it no longer has a courthouse in North Platte, the federal court has access to a North Platte trial location and remains capable of presiding over cases assigned to that location. Finally, NECivR [40.1\(b\)\(1\)](#) envisions selecting the most convenient trial location for the parties, witnesses and counsel²—not a compromise trial location (in this case, Lincoln) that offers a “fair and just” degree of inconvenience everyone.³

After applying and balancing the factors set forth in NECivR [40.1\(b\)\(1\)](#), the court finds North Platte is the proper trial location for this case.

Accordingly,

IT IS ORDERED:

1) Plaintiff's Request for Trial in North Platte, Nebraska, ([Filing No. 5](#)), is granted.

¹ Defendant states its representatives travel in and near Lincoln, Nebraska. But Defendant has not provided the residential or work addresses of the witnesses it will likely call for this case.

² Court personnel will need to travel to North Platte in the case is moved to that location. But North Platte remains a trial location for the Nebraska federal court. The convenience of the court and its staff is not mentioned in NECivR 40.1(b)(1), and it is not considered when deciding a motion to change a trial location.

³ Even if NECivR [40.1\(b\)](#) permitted selecting a trial location by compromise, the court seriously questions how Lincoln could be considered a “fair and just compromise” location for the attorneys in this case. Lincoln is 60 miles from Omaha; 400 miles from Scottsbluff.

- 2) Defendant's Motion to Transfer the trial location to Lincoln, Nebraska, ([Filing No. 7](#)), is denied.
- 3) This case is transferred to the North Platte trial docket.

January 25, 2016.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge